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# TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

		Complete if Known	
		Application Number	09/935,249
		Filing Date	08/22/01
		First Named Inventor	John M. Baron et al.
		Examiner Name	Doon Y Chow
		Group Art Unit	2675
Total Number of Pages in This Submission		Attorney Docket Number	10010911 (2873-017)
<b>ENCLOSURES (check all that apply)</b>			

- |  |   |   |
|--|---|---|
| <input checked="" type="checkbox"/> <b>Fee Transmittal Form</b>              | <input type="checkbox"/> Assignment Papers  | <input type="checkbox"/> After Allowance Communication to Group                       |
| <input checked="" type="checkbox"/> <b>Fee Attached (\$500.00)</b>           | <input type="checkbox"/> Drawing(s)   | <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences   |
| <input type="checkbox"/> Amendment/Reply                                     | <input type="checkbox"/> Licensing-related Papers                                       | <input checked="" type="checkbox"/> <b>Appeal Communication to Group Appeal Brief</b> |
| <input type="checkbox"/> After Final   | <input type="checkbox"/> Petition   | <input type="checkbox"/> Proprietary Information                                      |
| <input type="checkbox"/> Affidavits/declaration(s)                           | <input type="checkbox"/> Petition to Convert to a Provisional Application               | <input type="checkbox"/> Status Letter  |
| <input type="checkbox"/> Extension of Time Request                           | <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address | <input type="checkbox"/> Other Enclosure(s) (please identify below):                  |
| <input type="checkbox"/> Express Abandonment Request                         | <input type="checkbox"/> Terminal Disclaimer  |   |
| <input type="checkbox"/> Information Disclosure Statement                    | <input type="checkbox"/> Request for Refund   |   |
| <input type="checkbox"/> Certified Copy of Priority Document(s)              | <input type="checkbox"/> CD, Number of CD(s)  |   |
| <input type="checkbox"/> Response to Missing Parts/ Incomplete Application   |   |   |
| <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53 |   |   |

REMARKS:

SUBMITTED BY		Complete (if applicable)			
NAME AND REG. NUMBER	Brian S. Rosenbloom, Reg. No. 41,276				
SIGNATURE		DATE	December 27, 2004	DEPOSIT ACCOUNT USER ID	02-2135

<b>FEE TRANSMITTAL</b> For FY 2005 DEC 21 2004 (Large Entity) TRADEMARK OFFICE		Complete if Known	
		Application Number	09/935,249
		Filing Date	08/22/01
		First Named Inventor	John M. Baron et al.
		Examiner Name	Doon Y. Chow
		Group Art Unit	2675
<input type="checkbox"/> Applicant claims small entity status		Attorney Docket Number	10010911 (2873-017)
Total Amount of Payment	<b>(\$500.00)</b>	Confirmation Number	9746

**METHOD OF PAYMENT (check one)**

1. ☒ The Commissioner is hereby authorized to charge the fees indicated below or credit overpayment to Deposit Account Number 02-2135 in the name of Rothwell, Figg, Ernst & Manbeck
- ☒ Charge any additional fee required under 37 CFR 1.16 and 1.17 to Deposit Account No. 02-2135.
2. ☒ Payment by check enclosed

**FEE CALCULATION**
**1. FILING, SEARCH AND EXAMINATION FEES**

Code	Fee	Fee Description	Fee Paid
1001	300	Utility Filing Fee	[ ]
1111	500	Utility Search Fee	[ ]
1311	200	Utility Examination Fee	[ ]
1002	200	Design Filing Fee	[ ]
1112	100	Design Search Fee	[ ]
1312	130	Design Examination Fee	[ ]
1003	200	Plant Filing Fee	[ ]
1113	300	Plant Search Fee	[ ]
1313	160	Plant Examination Fee	[ ]
1004	300	Reissue Filing Fee	[ ]
1114	500	Reissue Search Filing Fee	[ ]
1314	600	Reissue Examination Fee	[ ]
1005	200	Provisional Filing Fee	[ ]

**SUBTOTAL \$**
**2. CLAIMS**

	Extra Claims	Fee	Fee Paid
Total Claims [ 20 ] - 20* = [ 0 ] x		\$50 = [ ]	
Independent Claims [ 3 ] - 3* = [ 0 ] x		200 = [ ]	
Multiple Dependent Claims +		360 = [ ]	

\*or number previously paid, if greater

**SUBTOTAL \$**
**3. APPLICATION SIZE FEE**

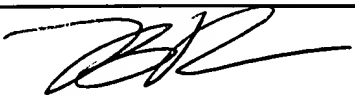
Total Sheets [ ] - 100 = [ ]/50 = [ ]\*\* x \$250 =

\*\* Number of each additional 50 or fraction thereof

**SUBTOTAL \$**
**FEE CALCULATION (continued)**
**4. ADDITIONAL FEES**

Code	Fee	Fee Description	Fee Paid
1051	130	Surcharge - late filing fee or oath	[ ]
1052	50	Surcharge - late provisional filing fee or cover sheet	[ ]
1053	130	Non-English specification	[ ]
1812	2,520	For filing a request for reexamination	[ ]
1804	920	Requesting publication of SIR prior to Examiner action	[ ]
1805	1,840	Requesting publication of SIR after Examiner action (reduced by basic filing fee paid)	[ ]
1251	120	Extension for reply within first month	[ ]
1252	450	Extension for reply within second month	[ ]
1253	1,020	Extension for reply within third month	[ ]
1254	1,590	Extension for reply within fourth month	[ ]
1255	2,160	Extension for reply within fifth month	[ ]
1401	500	Notice of Appeal	[ ]
1402	500	Filing a brief in support of an appeal	[500.00]
1403	1,000	Request for Oral Hearing	[ ]
1451	1,510	Petition to institute a public use proceeding	[ ]
1452	500	Petition to revive -unavoidable	[ ]
1453	1,500	Petition to revive - unintentional	[ ]
1807	50	Processing fee under 37 CFR 1.17(q)	[ ]
1806	180	Submission of Information Disclosure Statement	[ ]
1809	790	Filing a submission after final rejection (37 CFR 1.129(a))	[ ]
1810	790	For each additional invention to be examined (37 CFR 1.129(b))	[ ]
1801	790	Request for Continued Examination (RCE)	[ ]
1802	900	Request for expedited examination of a design application	[ ]
1504	300	Publication fee for early, voluntary, or normal publication	[ ]
1505	300	Publication fee for republication	[ ]
1455	200	Filing application for patent term adjustment	[ ]
1456	400	Request for reinstatement of term reduced	[ ]
1814	130	Statutory Disclaimer	[ ]
Other fee (specify)			[ ]

**SUBTOTAL \$500.00**

SUBMITTED BY				Complete (if applicable)	
NAME AND REG. NUMBER		Brian S. Rosenbloom, Reg. No. 41,276			
SIGNATURE		DATE	December 27, 2004	DEPOSIT ACCOUNT USER ID	02-2135



THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/935,249  
Applicant : John M. Baron  
Filed : 08/22/2001  
TC/A.U. : 2675  
Examiner : Chow, Doon Y.  
  
Docket No. : 10010911 (2873-017)  
Customer No. : 06449  
  
Confirmation No. : 9746

Mail Stop - Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**APPELLANT'S BRIEF ON APPEAL UNDER 37 C.F.R. § 41.37**

Sir:

The following comprises the Appellant's Brief on Appeal from the final rejection, dated May 25, 2004, of claims 1-20. This Appeal Brief is accompanied by the required appeal fee set forth in 37 C.F.R. § 1.17(c). Appellant's Notice of Appeal was filed on October 25, 2004, and December 25, 2004 falls on a Saturday and is a Federal Holiday. Therefore, the present Appeal Brief is timely filed.

12/28/2004 EAKUBAK1 00000038 09935249

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### I. REAL PARTY IN INTEREST

The above-captioned application is assigned in its entirety to Hewlett Packard Company, a company organized under the laws of the United States.

### II. RELATED APPEALS AND INTERFERENCES

Appellant states that, upon information and belief, Appellant is not aware of any co-pending appeal or interference which will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

### III. STATUS OF CLAIMS

Claims 1-20 are pending in the application. Claims 1-20 stand rejected. The rejection of claims 1-20 is being appealed.

### IV. STATUS OF AMENDMENTS

No amendments have been filed subsequent to the final rejection.

### V. SUMMARY OF CLAIMED SUBJECT MATTER

#### 1. Independent Claim 1

Independent claim 1 is directed to an image capturing device 100 (see FIG. 1). The claimed image capturing device 100

includes at least one acceleration sensor 108 (see FIG. 1), a display 130, 500 (see FIGS. 1 and 5), and a processor 105 (see FIG. 1). As shown in FIG. 1, processor 105 is in communication with sensor 108 and display 130 as indicated by the solid lines connecting processor 105 with sensor 108 and display 130. The claimed display 130, 500 includes a graphical selection indicator (see the arrow displayed in FIG. 5). The graphical selection indicator is capable of being moved in the display 130,500 to select from among two or more displayed icons.

The claimed acceleration sensor 108 is capable of detecting an acceleration motion of the device along at least one axis. In response to detecting the acceleration, the sensor 108 generates an acceleration signal. See Para. 0007. The processor 105 receives the acceleration signal and moves the graphical selection indicator in response to the acceleration signal. Id.

Thus, according to the invention defined in claim 1, a user of the imaging device 100 may select from different icons simply by moving the entire imaging device let, right, up or down, without having to press any buttons. Id.

## 2. Independent Claim 9

Independent claim 9 is directed to an image capturing device 100 (see FIG. 1). The claimed image capturing device 100 includes at least one acceleration sensing means for detecting an acceleration motion of the device along at least one axis and generating an acceleration signal in response to detecting the acceleration motion. The structure corresponding to the "acceleration sensing means" is an acceleration sensor 108 (see

FIG. 1 and Para. 0019). "The ... acceleration sensor 108 may be any type of sensor capable of detecting gross acceleration along an axis and generating an electrical output in response." Para. 0019. "The at least one acceleration sensor 108 may be a 3-axis accelerometer formed as a chip, such as an airbag sensor available from Fuji Electric Co., Japan." Para. 0023.

The claimed image capturing device 100 also includes a display 130,500, a processor 105 communicating with the display 130, and a memory 120 communicating with the processor 105. The claimed display 130,500 includes a graphical selection indicator (see the arrow in FIG. 5). The graphical selection indicator is capable of being moved in the display to select from among two or more displayed icons. The claimed memory 120 stores a predetermined threshold 128 and a slew rate variable 125 (see FIG. 1).

According to the invention defined in claim 9, the processor 105 moves the graphical selection indicator in response to the acceleration signal if the acceleration signal exceeds the predetermined threshold 120 stored in memory 120. Furthermore, the movement speed of the graphical selection indicator is controlled by the slew rate variable 125 stored in memory 120.

Thus, in the invention defined by claim 9, the process 105 will not move the graphical selection indicator in response to receiving the acceleration signal unless the received acceleration signal exceeds the predetermined threshold.

3. Independent Claim 13

Independent claim 13 is directed to a navigation method for an image capturing device 100. The method includes the steps of: (a) displaying two or more mode variables (see the menu 501 in FIG. 5); (b) detecting an acceleration of the image capturing device and generating an acceleration signal in response; and (c) moving a graphical selection indicator (see the arrow of FIG. 5) among the two or more mode variables in response to the acceleration signal.

This inventive method allows a user of the imaging device 100 to select a mode variable merely by moving the imaging device in a predetermined manner. That is, the user need not have to press a button to select a mode variable.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The following grounds of rejection are to be reviewed in this Appeal:

1. The rejection of claims 1-3 and 13-19 under 35 U.S.C. § 103(a) as being unpatentable over Thomas (U.S. Pat. No. 6,567,101) in view of Silverbrook (U.S. Pat. No. 6,405,055).

2. The rejection of claims 1-20 under 35 U.S.C. § 103(a) as being unpatentable over Feinstein (U.S. Pat. No. 6,466,198) in view of Thomas and Silverbrook .

## VII. ARGUMENTS

### 1. Claims 1-3 and 13-19 are patentable over Thomas in view of Silverbrook

#### A. Independent Claim 1

Independent claim 1 is patentable over Thomas in view of Silverbrook because neither Thomas nor Silverbrook, considered alone or in combination, teach or suggest all of the features of claim 1. For example, at the least, neither Thomas nor Silverbrook teach or suggest a "graphical selection indicator that is capable of being moved ... to select from among a plurality of displayed icons," as is claimed in claim 1.

Thomas discloses a digital information appliance 102 (see FIG. 1) having a display screen that displays a cursor 506 (see FIG. 5). Thomas also discloses that the appliance 102 may use an accelerometer to detect acceleration of the appliance. Thomas further discloses that the appliance 102 may move the cursor 506 across the display screen in response to detecting acceleration of the appliance 102. Nowhere does Thomas disclose a plurality of displayed icons, let alone that the cursor 506 is used to select from among a plurality of displayed icons. Silverbrook does not make up for the deficient teaching of Thomas. Silverbrook merely discloses a mobile phone with an integrated camera.

To overcome the fact that Thomas does not disclose a cursor that is moved to select from among a plurality of displayed



icons, the Office makes two arguments. First, the Office argues that the digital appliance 102 disclosed in Thomas inherently displays a plurality of icons. Second, the Office argues that Thomas suggests using the cursor 506 to select from among the inherently displayed icons. Applicants respectfully disagree with the Office.

(i) The Digital Appliance 102 Does Not Inherently  
Display A Plurality of Icons

In order to establish that digital appliance 102 inherently displays a plurality of icons, the Office must provide evidence that the digital appliance 102 necessarily displays a plurality of icons. See M.P.E.P. Section 2112 ("In relying upon the theory of inherency, the Office Action must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.") (citations omitted) (emphasis in the original). "Inherency, however, may not be established by probabilities or possibilities." Id.

The fact that it may be possible for a digital appliance 102, such as an organizer or electronic book, to display a plurality of icons does not mean that the appliance necessarily displays a plurality of icons. Moreover, the Office has provided no basis in fact or technical reasoning to support the allegation that the digital appliance 102 necessarily displays a plurality of icons. Accordingly, the Office has not established its theory of inherency.

For at least this reason, the rejection of claim 1 should be withdrawn.

(ii) Thomas Does Not Suggest Using Cursor 506 to Select  
From Among a Plurality of Displayed Icons

The Office contends that Thomas suggests using the cursor 506 to select from among a plurality of displayed icons. This contention is without merit.

First, as discussed above, Thomas does not teach or suggest a plurality of displayed icons. Therefore, by definition, Thomas can not teach or suggest selecting from among a plurality of displayed icons.

Second, with respect to the cursor 506, Thomas merely teaches and suggests that the "display of cursor [506] may be manipulated." Col. 7, lines 13-14. More specifically, Thomas teaches, "[t]he display of [] cursor 506 is scrolled across a display device 104 using any of the methods previously discussed," col. 7, lines 17-19, and "[t]he display of the cursor 506 is scrolled on the display device 104 in a direction 524 corresponding to rotation 522 about the Q-axis . . .," col 7., lines 50-52.

Nowhere is there any suggestion within the four corners of Thomas that the cursor 506 functions to select from among a plurality of displayed icons, as is claimed in claim 1.

The only factual basis the Office has put forth to support its proposition that Thomas suggests the feature in question is that Thomas teaches using an accelerometer instead of a mouse to move the cursor 506. However, substituting a mouse for an accelerometer is irrelevant to the question of whether Thomas

suggests that cursor 506 is "moved to select from among a plurality of displayed icons," as is recited in claim 1. Not only is it irrelevant, but the Office does not even explain why substituting a mouse for an accelerometer has any bearing on whether Thomas suggests that cursor 506 is "moved to select from among a plurality of displayed icons." Instead of providing an explanation, the Office merely makes the conclusory remark that, "[w]ith these teachings it is clear that Thomas suggests the above claimed features." Final Office Action, p. 5.

In short, Thomas does not suggest moving the cursor 506 to "select from among a plurality of displayed icons." For this additional reason, the rejection of claim 1 should be withdrawn.

B. Independent Claim 13

Independent claim 13 is patentable over Thomas in view of Silverbrook because neither Thomas nor Silverbrook, considered alone or in combination, teach or suggest all of the features of claim 13. For example, at the least, neither Thomas nor Silverbrook teach or suggest a "displaying a plurality of mode variables ... and moving a graphical selection indicator among said plurality of mode variables in response to said acceleration signal," as is recited in claim 13.

As discussed above, Thomas discloses a digital appliance 102 that moves a cursor 506 displayed in a display screen of the appliance in response to acceleration of the appliance. And Silverbrook merely discloses a mobile phone with an integrated camera.

Nowhere do either Thomas or Silverbrook teach or suggest "displaying a plurality of mode variables." Moreover, the Final Office Action itself does not even allege that Thomas or Silverbrook disclose this feature.

Applicant can only assume that the Office is equating the "icons" recited in claim 1 with the "mode variables" recited in claim 13. However, a mode variable and an icon are not the same thing. A mode variable is a "setting that the user can change during operation of the image capturing device." Para 0036, last sentence. Moreover, even if a mode variable is the same thing as an icon, as discussed above, Thomas does not teach or suggest displaying a plurality of icons, explicitly or inherently.

Furthermore, even if we were to assume arguendo that Thomas or Silverbrook teach or suggest displaying a plurality of mode variable, neither Thomas nor Silverbrook teach or suggest "moving a graphical selection indicator among said plurality of mode variables in response to [an] acceleration signal."

First, Silverbrook does not teach or suggest moving anything in response to an acceleration signal. Second, although Thomas teaches moving a cursor 506 in response to an acceleration signal, Thomas does not teach or suggest that the cursor 506 is moved "among said plurality of mode variables," as is required by claim 13, and the Office fails to even allege that Thomas teaches or suggests this feature.

As discussed above, with respect to the cursor 506, Thomas merely teaches and suggests that the "display of cursor [506] may be manipulated." Col. 7, lines 13-14. More specifically, Thomas teaches, "[t]he display of [] cursor 506 is scrolled across a display device 104 using any of the methods previously

discussed," col. 7, lines 17-19, and "[t]he display of the cursor 506 is scrolled on the display device 104 in a direction 524 corresponding to rotation 522 about the Q-axis ...," col 7., lines 50-52. Nowhere is there any suggestion within the four corners of Thomas that the cursor 506 is moved "among a plurality of [displayed] mode variables."

In short, neither Thomas nor Silverbrook teach or suggest moving the cursor 506 "among [a] plurality of [displayed] mode variables in response to an acceleration signal." For at least this reason, the rejection of claim 13 should be withdrawn.

C. Dependent Claim 2

Dependent claim 2 is patentable over Thomas in view of Silverbrook because neither Thomas nor Silverbrook, considered alone or in combination, teach or suggest all of the features of claim 2. For example, at the least, neither Thomas nor Silverbrook teach or suggest a "three acceleration sensors, with each sensor being positioned along a unique axis," as is claimed in claim 2.

Silverbrook does not disclose any acceleration sensors. Thomas doesn't make up for the deficient teachings of Silverbrook. Thomas discloses an acceleration sensor, but does not disclose three acceleration sensors, wherein each sensor is positioned along a unique axis, as is required by claim 2.

Accordingly, the rejection of claim 2 should be withdrawn because neither Thomas nor Silverbrook, considered alone or in combination, teach or suggest all of the features of claim 2.

D. Dependent Claims 3, and 14-19

Claim 3 depends from independent claim 1, and is patentable for at least the same reasons as discussed above with respect to claim 1. Claims 14-19 depend from independent claim 13, and are patentable for at least the same reasons as discussed above with respect to claim 13.

2. Claims 1-20 are patentable over Feinstein in view of Thomas and Silverbrook

A. Independent Claim 1

Independent claim 1 is patentable over Feinstein in view of Thomas and Silverbrook because neither Feinstein, Thomas nor Silverbrook, considered alone or in combination, teach or suggest all of the features of claim 1. For example, at the least, neither Feinstein, Thomas nor Silverbrook teach or suggest a "graphical selection indicator that is capable of being moved ... to select from among a plurality of displayed icons," as is claimed in claim 1.

As discussed above with respect to the first rejection of claim 1, neither Thomas nor Silverbrook, alone or in combination, teach or suggest the above feature. Feinstein does not make up for the deficient teachings of Thomas and Silverbrook.

Feinstein discloses a hand-held communication or computing device having "two operational modes, which ... are referred to as view navigation mode and fixed mode." Col. 5, lines 32-35. Feinstein teaches that when the device is set to the view navigation mode, "the display view is automatically scrolled to

follow the rotational movements of the [hand holding the device]." Col. 5, lines 35-37. Feinstein achieves this feature by including a sensor (e.g., an accelerometer) in the device to detect rotational movements of the device. Accordingly, like the invention defined in claim 1, the Feinstein device includes an accelerometer.

However, unlike the invention defined in claim 1, Feinstein does not teach or suggest that a graphical selection indicator is moved in response to the accelerometer sensing movement of the device. The Office is in agreement with this assessment of Feinstein. According to the Final Office Action, "Feinstein discloses moving the graphical image, but not the graphical selection indicator, in response to the acceleration signal." Final Office Action, p. 3.

Accordingly, Feinstein cannot make up for the deficient teachings of Thomas and Silverbrook. In short, neither Feinstein, Thomas nor Silverbrook teach or suggest a "graphical selection indicator that is capable of being moved ... to select from among a plurality of displayed icons," as is claimed in claim 1. For at least this reason, the rejection of claim 1 over Feinstein in view of Thomas and Silverbrook should be withdrawn.

B. Independent Claim 9

Independent claim 9 is patentable over Feinstein in view of Thomas and Silverbrook because neither Feinstein, Thomas nor Silverbrook, considered alone or in combination, teach or suggest all of the features of claim 9. For example, at the least, neither Feinstein, Thomas nor Silverbrook teach or suggest any of

the following features recited in claim 9: (a) "a graphical selection indicator ... to select from among a plurality of displayed icons ... wherein ... the graphical selection indicator [is moved] in response to [an] acceleration signal," (b) "a memory ... storing a predetermined threshold ... wherein [a] processor moves said graphical selection indicator ... if said acceleration signal exceeds said predetermined threshold," and (c) "a memory ... storing a slew rate variable ... wherein a movement speed of said graphical selection indicator is controlled by said slew rate."

- (a) Neither Feinstein, Thomas nor Silverbrook teach or suggest "a graphical selection indicator ... to select from among a plurality of displayed icons ... wherein ... the graphical selection indicator [is moved] in response to [an] acceleration signal."

As discussed above with respect to the rejection of claim 1 over Thomas in view of Silverbrook, neither Thomas nor Silverbrook teach or suggest "a graphical selection indicator ... to select from among a plurality of displayed icons." And as discussed above with respect to the rejection of claim 1 over Feinstein in view of Thomas and Silverbrook, Feinstein does not teach or suggest "a graphical selection indicator." Thus, Feinstein does not make up for the deficient teachings of Thomas and Silverbrook.

Accordingly, because neither Feinstein, Thomas nor Silverbrook, considered alone or in combination, teach or suggest "a graphical selection indicator ... to select from among a plurality of displayed icons ... wherein ... the graphical



selection indicator [is moved] in response to [an] acceleration signal," the rejection of claim 9 should be withdrawn.

- (b) Neither Feinstein, Thomas nor Silverbrook teach or suggest "a memory ... storing a predetermined threshold ... wherein [a] processor moves said graphical selection indicator ... if said acceleration signal exceeds said predetermined threshold."

Neither Thomas nor Silverbrook make any reference or suggestion to a memory that stores a predetermined threshold. Feinstein does disclose a predetermined threshold. However, the claimed threshold does not read on the threshold disclosed in Feinstein. The claimed threshold is an "acceleration signal" threshold. That is, claim 9 requires that the acceleration signal be compared with the claimed predetermined threshold because, as recited in claim 9, the graphical selection indicator is not moved unless the acceleration signal exceeds the predetermined threshold. Feinstein does not disclose such an "acceleration signal" threshold.

On the contrary, Feinstein discloses a "finger-tap" or "sound intensity" threshold. That is, Feinstein discloses comparing a sound intensity to the threshold limit. See Col. 9, lines 48-57 and Claim 13 ("... activate a view navigation mode of operation in response to a finger tap with sound intensity above a preset threshold limit"). Feinstein does not disclose comparing an acceleration signal to a threshold, as is required by claim 9.

Accordingly, because neither Feinstein, Thomas nor Silverbrook, considered alone or in combination, teach or suggest

"a memory ... storing a predetermined threshold ... wherein [a] processor moves said graphical selection indicator ... if said acceleration signal exceeds said predetermined threshold," the rejection of claim 9 should be withdrawn.

- (c) Neither Feinstein, Thomas nor Silverbrook teach or suggest "a memory ... storing a slew rate variable ... wherein a movement speed of said graphical selection indicator is controlled by said slew rate."

Neither Thomas, Silverbrook nor Feinstein make any reference or suggestion to a memory that stores a slew rate variable, let alone a slew rate variable that controls the movement speed of a graphical selection indicator. Moreover, the Office does not even allege that Thomas, Silverbrook or Feinstein teach or suggest this feature. Accordingly, for this reason alone the rejection of claim 9 should be withdrawn.

C. Independent Claim 13

Independent claim 13 is patentable over Feinstein in view of Thomas and Silverbrook because neither Feinstein, Thomas nor Silverbrook, considered alone or in combination, teach or suggest all of the features of claim 13. For example, at the least, neither Feinstein, Thomas nor Silverbrook teach or suggest "displaying a plurality of mode variables ... and moving a graphical selection indicator among said plurality of mode

variables in response to said acceleration signal," as is claimed in claim 13.

As discussed above with respect to the first ground of rejection, neither Thomas nor Silverbrook teach or suggest the above feature.

Feinstein does not make up for the deficient teachings of Thomas and Silverbrook. As established above, Feinstein does not teach or suggest "moving a graphical selection indicator ... in response to said acceleration signal."

In short, neither Feinstein, Thomas nor Silverbrook teach or suggest "displaying a plurality of mode variables ... and moving a graphical selection indicator among said plurality of mode variables in response to said acceleration signal," as is claimed in claim 13. For at least this reason, the rejection of claim 13 over Feinstein in view of Thomas and Silverbrook should be withdrawn.

D. Dependent Claim 4

Dependent claim 4 is patentable over Feinstein in view of Thomas and Silverbrook because neither Feinstein, Thomas nor Silverbrook, considered alone or in combination, teach or suggest all of the features of claim 4. For example, at the least, neither Feinstein, Thomas nor Silverbrook teach or suggest "a memory ... storing a predetermined threshold and said graphical selection indicator is moved in response to said acceleration signal only if said acceleration signal exceeds said predetermined threshold," as is claimed in claim 4.

Neither Thomas nor Silverbrook make any reference or suggestion to a memory that stores a predetermined threshold. Feinstein does disclose a predetermined threshold. However, the threshold of claim 4 does not read on the threshold disclosed in Feinstein. The claimed threshold is an "acceleration signal" threshold. That is, claim 4 requires that the acceleration signal be compared with the claimed predetermined threshold because, as recited in claim 4, the graphical selection indicator is not moved unless the acceleration signal exceeds the predetermined threshold. Feinstein does not disclose such an "acceleration signal" threshold.

On the contrary, Feinstein discloses a "finger-tap" or "sound intensity" threshold. See Col. 9, lines 48-57 and Claim 13 ("... activate a view navigation mode of operation in response to a finger tap with sound intensity above a preset threshold limit"). That is, Feinstein discloses comparing a sound intensity to the threshold limit. Feinstein does not disclose comparing an acceleration signal to a threshold, as is required by claim 4.

Accordingly, because neither Feinstein, Thomas nor Silverbrook, considered alone or in combination, teach or suggest "a memory ... storing a predetermined threshold and said graphical selection indicator is moved in response to said acceleration signal only if said acceleration signal exceeds said predetermined threshold," the rejection of claim 4 should be withdrawn.

E. Dependent Claim 5

Dependent claim 5 is patentable over Feinstein in view of Thomas and Silverbrook because neither Feinstein, Thomas nor Silverbrook, considered alone or in combination, teach or suggest all of the features of claim 5. For example, at the least, neither Feinstein, Thomas nor Silverbrook teach or suggest a "a memory ... storing a user-adjustable predetermined threshold and said graphical selection indicator is moved in response to said acceleration signal only if said acceleration signal exceeds said user-adjustable predetermined threshold," as is claimed in claim 5.

Like claim 4, claim 5 requires an "acceleration signal" threshold. That is, like claim 4, claim 5 requires that that selection indicator is moved only if the acceleration signal exceed a threshold. As discussed above with respect to claim 4, neither Feinstein, Thomas nor Silverbrook, considered alone or in combination, teach or suggest an "acceleration signal" threshold. For this reason, the rejection of claim 5 should be withdrawn. Moreover, claim 5 requires that the threshold be "user-adjustable." The art of record does not teach or suggest this feature. For this additional reason, the rejection of claim 5 should be withdrawn.

F. Dependent Claim 6

Dependent claim 6 is patentable over Feinstein in view of Thomas and Silverbrook because neither Feinstein, Thomas nor Silverbrook, considered alone or in combination, teach or suggest

all of the features of claim 6. For example, at the least, neither Feinstein, Thomas nor Silverbrook teach or suggest "a memory ... storing a slew rate variable, wherein a movement speed of the graphical selection indicator is controlled by said slew rate," as is claimed in claim 6.

Neither Thomas, Silverbrook nor Feinstein make any reference or suggestion to a memory that stores a slew rate variable, let alone a slew rate variable that controls the movement speed of a graphical selection indicator. Moreover, the Office does not even allege that Thomas, Silverbrook or Feinstein teach or suggest this feature. Accordingly, the rejection of claim 6 should be withdrawn.

G. Dependent Claim 10

Dependent claim 10 is patentable over Feinstein in view of Thomas and Silverbrook because neither Feinstein, Thomas nor Silverbrook, considered alone or in combination, teach or suggest all of the features of claim 10. For example, at the least, neither Feinstein, Thomas nor Silverbrook teach or suggest a "user-adjustable predetermined threshold," as is claimed in claim 10. More specifically, neither Thomas, Silverbrook nor Feinstein make any reference or suggestion to user-adjustable threshold, wherein the threshold is compared to an acceleration signal. Moreover, the Office does not even allege that Thomas, Silverbrook or Feinstein teach or suggest this feature. Accordingly, the rejection of claim 10 should be withdrawn.

H. Dependent Claim 20

Dependent claim 20 is patentable over Feinstein in view of Thomas and Silverbrook because neither Feinstein, Thomas nor Silverbrook, considered alone or in combination, teach or suggest all of the features of claim 20. For example, at the least, neither Feinstein, Thomas nor Silverbrook teach or suggest "comparing [an] acceleration signal to a predetermined threshold and moving [a] graphical selection indicator in response to said acceleration signal only if said acceleration signal exceeds said predetermined threshold," as is claimed in claim 20.

Neither Thomas nor Silverbrook make any reference or suggestion to a predetermined threshold. Feinstein does disclose a predetermined threshold. However, the threshold of claim 20 does not read on the threshold disclosed in Feinstein. The claimed threshold is an "acceleration signal" threshold. That is, claim 20 requires that the acceleration signal be compared with the predetermined threshold. Feinstein does not disclose such an "acceleration signal" threshold.

On the contrary, Feinstein discloses a "finger-tap" or "sound intensity" threshold. That is, Feinstein discloses comparing a sound intensity to the threshold limit. Feinstein does not disclose comparing an acceleration signal to a threshold, as is required by claim 20.

Accordingly, because neither Feinstein, Thomas nor Silverbrook, considered alone or in combination, teach or suggest "comparing [an] acceleration signal to a predetermined threshold and moving [a] graphical selection indicator in response to said acceleration signal only if said acceleration signal exceeds said

predetermined threshold," the rejection of claim 20 should be withdrawn.

I. Dependent Claims 2, 7-8, 11-12 and 14-19

Claims 2 and 7-8 depend from independent claim 1, and are patentable for at least the same reasons as discussed above with respect to claim 1. Claims 11-12 depend from independent claim 9, and are patentable for at least the same reasons as discussed above with respect to claim 9. Claims 14-19 depend from independent claim 13, and are patentable for at least the same reasons as discussed above with respect to claim 13.



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CONTINGENT AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT AND  
CONTINGENT PETITION FOR EXTENSION OF TIME

Unless a check for the present Brief on Appeal is submitted herewith for the fee required under 37 C.F.R. §§ 1.192(a) and 1.17(c), please charge said fee to Deposit Account No. 02-2135.

Appellant hereby petitions for any extension of time which may be required to maintain the pendency of this case, and any required fee for such extension is to be charged to Deposit Account No. 02-2135.

Respectfully submitted,

By

  
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Date: December 27, 2004

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VIII. CLAIMS APPENDIX

1. An image capturing device, comprising:  
at least one acceleration sensor capable of detecting an acceleration motion of said device along at least one axis and generating an acceleration signal in response;  
a display that includes a graphical selection indicator that is capable of being moved in said display to select from among a plurality of displayed icons;  
a processor communicating with said at least one acceleration sensor and said display;  
wherein said processor receives said acceleration signal and moves said graphical selection indicator in response to said acceleration signal.
2. The device of claim 1, wherein said device further comprises three acceleration sensors, with each sensor being positioned along a unique axis of three substantially orthogonal axes.
3. The device of claim 1, wherein said at least one acceleration sensor comprises a three-axis acceleration sensor.
4. The device of claim 1, further including a memory communicating with said processor and storing a predetermined threshold and said graphical selection indicator is moved in response to said acceleration signal only if said acceleration signal exceeds said predetermined threshold.

5. The device of claim 1, further including a memory communicating with said processor and storing a user-adjustable predetermined threshold and said graphical selection indicator is moved in response to said acceleration signal only if said acceleration signal exceeds said user-adjustable predetermined threshold.

6. The device of claim 1, further including a memory communicating with said processor and storing a slew rate variable, wherein a movement speed of said graphical selection indicator is controlled by said slew rate.

7. The device of claim 1, further including a memory communicating with said processor and storing an enable variable, wherein said processor moves said graphical selection indicator in response to said acceleration signal only if said enable variable is set to an enable state.

8. The device of claim 1, further comprising a select switch, wherein said processor moves said graphical selection indicator in response to said acceleration signal only if said select switch is set to an enable state.

9. An image capturing device, comprising:

an acceleration sensing means for detecting an acceleration motion of said device along at least one axis and generating an acceleration signal in response;

a display that includes a graphical selection indicator that is capable of being moved in said display to select from among a plurality of displayed icons;

a processor communicating with said display and receiving said acceleration signal; and

a memory communicating with said processor and storing a predetermined threshold and storing a slew rate variable;

wherein said processor moves said graphical selection indicator in response to said acceleration signal if said acceleration signal exceeds said predetermined threshold, and wherein a movement speed of said graphical selection indicator is controlled by said slew rate.

10. The device of claim 9, wherein said predetermined threshold comprises a user-adjustable predetermined threshold.

11. The device of claim 9, with said memory further storing an enable variable, wherein said processor moves said graphical selection indicator in response to said acceleration signal only if said enable variable is set to an enable state.

12. The device of claim 9, further comprising a select switch, wherein said processor moves said graphical selection indicator in response to said acceleration signal only if said select switch is set to an enable state.

13. A navigation method for an image capturing device, comprising the steps of: displaying a plurality of mode variables; detecting an acceleration of said image capturing

device and generating an acceleration signal in response; and moving a graphical selection indicator among said plurality of mode variables in response to said acceleration signal.

14. The method of claim 13, wherein the detecting step comprises detecting an acceleration magnitude.

15. The method of claim 13, wherein the detecting step comprises detecting an acceleration direction.

16. The method of claim 13, wherein the detecting step comprises detecting a vertical pivoting motion.

17. The method of claim 13, wherein the detecting step comprises detecting a horizontal pivoting motion.

18. The method of claim 13, wherein the detecting step comprises detecting a horizontal rolling motion.

19. The method of claim 13, wherein the detecting step further comprises detecting accelerations along three substantially orthogonal axes.

20. The method of claim 13, further comprising the steps of: storing a predetermined threshold; comparing said acceleration signal to said predetermined threshold; and moving said graphical selection indicator in response to said acceleration signal only if said acceleration signal exceeds said predetermined threshold.

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#### IX. EVIDENCE APPENDIX

Not applicable.

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X. RELATED PROCEEDINGS APPENDIX

Not applicable.